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8 **IN THE UNITED STATES DISTRICT COURT**  
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**  
10

11 JEFFREY MARSHALL,

No. CIV S-04-1841-LKK-CMK

12 Plaintiff,

13 vs.

ORDER

14 FAIRFIELD POLICE  
15 DEPARTMENT, et al.,

16 Defendants.  
17 \_\_\_\_\_/


18 Plaintiff, a state prisoner proceeding pro se and in forma pauperis, brings this civil  
19 rights action pursuant to 42 U.S.C. § 1983. On April 13, 2005, the court granted plaintiff's  
20 request for leave to proceed in forma pauperis. The court also dismissed plaintiff's complaint  
21 with leave to amend. The court's April 13, 2005, order directed plaintiff to file an amended  
22 complaint within 30 days. On September 28, 2005, the court sua sponte granted plaintiff an  
23 extension of time to file an amended complaint. Plaintiff filed a document entitled "second  
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1 amended complaint”<sup>1</sup> on October 14, 2005. Plaintiff also filed what appears to be an identical  
2 document, also entitled “second amended complaint,” on October 21, 2005. The Federal Rules of  
3 Civil Procedure provide that a party may amend his or her pleading “. . . once as a matter of  
4 course at any time before a responsive pleading is served.” Fed. R. Civ. P. 15(a). Because no  
5 responsive pleading has been served in this case, the court is unable to determine whether the  
6 October 21, 2005, document is merely duplicative of the October 14, 2005, document, or whether  
7 plaintiff intends the October 21, 2005, document to constitute an amended pleading filed as of  
8 right pursuant to Rule 15(a).

9 Before the court can conduct an initial review of plaintiff’s amended complaint as  
10 required by law, plaintiff will be directed to inform the court whether he intends to proceed on the  
11 October 14, 2005, or October 21, 2005, document. Plaintiff is warned that failure to comply with  
12 this order may result in the dismissal of this action. See Local Rule 11-110.

13 Accordingly, IT IS HEREBY ORDERED that plaintiff shall inform the court in  
14 writing, within 20 days of the date of service of this order, whether he intends to proceed on the  
15 October 14, 2005, or October 21, 2005, document.

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17 DATED: October 27, 2005.

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20 **CRAIG M. KELLISON**  
21 UNITED STATES MAGISTRATE JUDGE  
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25 <sup>1</sup> The court notes that, while plaintiff entitles this document “second amended  
26 complaint,” no prior amended complaints have been filed in this action.